

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.726 OF 2005
ALONG WITH
CRIMINAL APPLICATION NO. 727 OF 2005

Mrs. Hutoxi Viraf Kanga ...Petitioner.

V/s

Amol Mahadev Warang & Anr. ...Respondents.

Mr. R.U. Dholakia for the petitioner in both the
Petitions.

Mr. D.P. Adsule for Respondent No.2 State.

CORAM: V.M. KANADE, J.
DATE : 7th March, 2005

P.C.

1. Both the above Writ Petitions are being disposed
of by this common order.

2. Heard the learned Counsel appearing on behalf of
the Petitioner.

3. Petitioner is the original accused No.3 in the
criminal complaint filed by the respondent No.1 in the
Court of Metropolitan Magistrate, 29th Court at
Bhoiwada, Mumbai.

4. A complaint was filed by respondent No.1 against
the Petitioner - Hutoxi Viraf Kanga and M/s Ahura
Mazda Dairy Farm. It was alleged in the complaint

that the accused No.1 was carrying on business in finance and was raising deposits from the public at large. An advertisement was issued in the name of accused No.1 inviting investors in various deposit schemes. Pursuant to the said advertisement, the complainant invested various amounts which were his hard earned monies saved by him during his life time. The accused issued post-dated cheques in favour of the complainant for a total amount of Rs 30,000/-. The accused had given two cheques. When the complainant presented these two cheques to his Bankers for payment, both the cheques were returned dishonoured. The complainant, therefore, sent notices through his advocate. However, no payment was made within the statutory period of 15 days from the date of the receipt of the notice. Since the accused failed to make payment within the statutory period of 15 days, the complainant filed a complaint in the 29th Court, Bhoiwada, Mumbai. After the complaint was verified, a process was issued by the Metropolitan Magistrate.

5. The learned Counsel appearing on behalf of the petitioner submitted that the petitioner is not the signatory of the dishonoured cheques. It is further submitted that the learned Metropolitan Magistrate, without verifying the fact that the petitioner was not

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a signatory to the said cheque had issued the process and, therefore, the order was liable to be quashed. It is further submitted that since the petitioner was neither a drawer nor a signatory of the dishonoured cheques, the provisions of section 138 were not applicable and, therefore, the order issuing process was liable to be recalled qua the petitioner.

6. I have heard the learned Counsel appearing for the petitioner at length. I have also perused the complaint which is filed by the respondent No.1. In para 2 of the complaint, it has been averred by the complainant that the accused Nos. 2 and 3 were persons who were in charge and responsible for the conduct of business of accused No.1 and, therefore, they were liable to be prosecuted in their capacity as Proprietors, Directors or the Partners of the said accused No.1 - Firm. Thus, specific averments are made in the complaint that the petitioner was in charge of the running business of accused No.1, though he was not a signatory of the cheques.

7. In my view, no case is made out by the petitioner for quashing the complaint. The question is whether the petitioner was in charge of the business or not can be considered only after the evidence is led by

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the complainant and it is not possible to give finding on that point at this stage. Both the Petitions are devoid of merit and are accordingly rejected.

V.M. KANADE, J.